IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 04/03/2004

CORAM

THE HONOURABLE Mr. JUSTICE P.D.DINAKARAN

Writ Petition No.12148 of 1997

Puratchi Thalaivar M.G.R.
Transport Corporation Ltd.,
rep. by its Managing Director,
Kancheepuram. .. Petitioner

-Vs-

1. The Presiding Officer,
Principal Labour Court,
Madras-104.

2. M.Gnanasekaran (deceased)

3. Saraswathi
4. Praveena
5. Prasanna
6. Andal
.. Respondents 3 to 6 brought on
record as legal representatives
of the deceased 2nd respondent
as per order dt.23.2.2001 in
WMP.No.30864/2000. .. Respondents

Prayer: Petition filed under Article 226 of the Constitution of India for the issuance of writ of Certiorari as stated therein.

!For Petitioner : Mr.J.James

^For Respondents : Ms.Devi Shankar for
Ms.J.Soundari Chandrasekar-R3 to 6.

:O R D E R

By an award of the first respondent-Labour Court dated 30.1.1997 made in I.D.No.247 of 1995, the order of dismissal dated 10.2.1994 passed by the writ petitioner-Transport Corporation, terminating the service of the second respondent-employee, pursuant to a disciplinary action initiated against him,

with respect to an allegation that under the influence of alcohol, he stopped the bus in front of the depot, was set aside, with a consequential direction to reinstate the second respondent-employee with full backwages.

1.2. Assailing the award dated 30.1.1997, the petitioner-Transport Corporation has preferred the above writ petition seeking a writ of Certiorari to call for the records relating to the award dated 30.1.199 7 in I.D.No.247 of 1995 on the file of the 1st respondent and quash the same.

2.1. In brief, by an order of the petitioner-Transport Corporation herein dated 10.2.1994, the second respondent- employee, who was also an office bearer of the trade union, was terminated from service of the petitioner-Transport Corporation, pursuant to a disciplinary action initiated against him on the following charge:
" The petitioner was intoxicated drunken mood and stood at the gate of central depot along with another by name T.Ganesan, driver and was obstructing all the vehicles from going out of depot. He had also shouted against the security guard not to touch him when he tried to remove him from the place and abused the Branch Manager and certain other union leaders in the presence of the labourers."

2.2. The second respondent-employee submitted his explanation on 12.1.1993 to the charge memo dated 30.12.1992. Not satisfied with the explanation submitted by the second respondent-employee, the petitioner-Transport Corporation appointed an Enquiry Officer, who conducted enquiry on 1.4.1993 and rendered his findings in his report dated 20.7 .1993, holding that the said charge was proved. Based on the findings of the Enquiry Officer dated 20.7.1993, a second show cause notice dated 14.9.1993 was served on the second respondent-employee to show cause why he should not be dismissed from service. Not satisfied with the explanation submitted by the second respondent to the second show cause notice dated 14.9.1993, the petitioner-Transport Corporation by order dated 10.2.1994 dismissed the second respondent-employee from the service of the petitioner-Transport Corporation.
2.3. Aggrieved by the said dismissal order dated 10.2.1994 passed by the petitioner-Transport Corporation, the second respondentemployee raised an industrial dispute in I.D.No.247 of 1995 before the first respondent-Labour Court. The first respondent-Labour Court, by award dated 30.1.1997, set aside the order of dismissal dated 10.2.1994 passed by the petitioner-Corporation, with a direction to reinstate the second respondent-employee with full backwages, holding that the findings of the Enquiry Officer was erroneous, as he came to the conclusion that the second respondent-employee was under the influence of alcohol without any evidence, as none of the witnesses deposed that the second respondent was under the influence of alcohol.

3. According to Mr.J.James, learned counsel appearing for the petitioner, the first respondent-Labour Court ought not to have interfered with the findings of the Enquiry Officer. In any event, even assuming the findings are not based on any evidence, the first respondentLabour Court ought to have remitted the matter to the petitionerTransport Corporation for de nova enquiry.

4. Ms.Devi Shankar, learned counsel appearing for respondents 3 to 6 , at the outset, brought to my notice that the second respondent died during the pendency of the writ petition leaving respondents 3 to 6 as his legal representatives, who have been impleaded as party respondents 3 to 6 in the above writ petition.

5. In view of the death of the second respondent- employee, the question of reinstating him as directed by the first respondent-Labour Court in the award dated 30.1.1997 does not arise. That apart, even assuming the enquiry conducted by the Enquiry Officer is irregular; the finding of the enquiry Officer is based upon no evidence; and therefore the first respondent-Labour Court ought to have remitted the matter for de novo enquiry, the question of holding de novo enquiry is also not possible in the instant case, due to the death of the second respondent-employee, pending disposal of the writ petition.

6. At this point of time, the learned counsel for the petitioner submits that even though the first respondent-Labour Court by impugned award dated 30.1.1997 in I.D.No.247 of 1995 set aside the order of dismissal dated 10.2.1994 and directed the petitioner-Corporation to reinstate the second respondent-deceased employee, in view of the death of the second respondent-deceased employee, suffice it to permit the legal representatives of the second respondent viz., respondents 3 to 6 to withdraw the amount already deposited by the petitionerCorporation to the credit of I.D.No.247 of 1995 on the file of the first respondent-labour Court and to treat the order of dismissal as an order of retirement from the date of award viz., 30.1.1997.

7. Under such circumstances, I am inclined to pass the following order:-
(i) the order of dismissal dated 10.2.1994 dismissing the second respondent-deceased employee with effect from the date of dismissal viz., 10.2.1994 shall be modified as an order of retirement with effect from the date of award viz., 30.1.1997;
(ii) the legal representatives of the second respondent-deceased employee viz., respondents 3 to 6 shall be paid backwages, which the second respondent-deceased employee is entitled to, till the date of award viz., 30.1.1997;
(iii) the legal representatives of the second respondent-deceased employee are permitted to withdraw the deposit already made by the petitioner-Corporation to the credit of I.D.No.247 of 1995 on the file of the first respondent-Labour Court and if any further amount to be paid towards the backwages till the date of the award, the same shall be paid by the petitioner-Corporation within two months from the date of receipt of a copy of this order; and
(iv) the petitioner-Corporation shall work out the terminal benefits payable to the second respondent-deceased employee and settle the same to the legal representatives of the second respondent viz., respondents 3 to 6 within two months from the date of receipt of a copy of this order:

The writ petition is ordered accordingly. No costs.

Index : Yes
Internet: Yes

ATR

To,

The Presiding Officer,
Principal Labour Court,
Madras-104.